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SUPREME COURT OF THE UNITED STATES.

No. 723.—October Term, 1927.

The United States of America, Plaintiff in Error, *vs.* Jacob A. Goldman, Louis J. Desmare, Clem Miner, et al.	In Error to the District Court of the United States for the Southern District of Ohio.

[May 14, 1928.]

Mr. Justice Sanford delivered the opinion of the Court.

An information presented by the United States to the District Court charged Jacob A. Goldman and others with criminal contempts committed by violating an injunction that had been granted by the court in a suit in equity brought by the United States against the National Cash Register Co. and others to enforce the Sherman Anti-Trust Act. On motion of the defendants in error the information was dismissed as to them on the ground that under § 25 of the Clayton Act[1] the prosecution was barred by the statute of limitations of one year. The United States sued out this direct writ of error under the Criminal Appeals Act.[2]

The questions here are: 1st, whether this Court has jurisdiction under the writ of error; and 2nd, if so, whether the one year statute of limitations is applicable.

The information showed upon its face that the alleged contempts were committed by the defendants in error more than one year, but less than three years, prior to its presentment. They entered pleas of not guilty. In anticipation of and preparation for the trial a special examiner was appointed to take, transcribe and report to the court such testimony as the parties might offer, with the provision and understanding that at the trial the parties might rely on such portion of this testimony as might be desired

[1] 38 Stat. 730, c. 323; U. S. C., Tit. 28, § 390.
[2] 34 Stat. 1246, c. 2564; U. S. C., Tit. 18, § 682.

and also introduce additional testimony, either oral or documentary. The testimony taken by the examiner was lodged with the District Judge, and, in accordance with a *nunc pro tunc* order, endorsed as "Filed with the court pending trial in open court." Before the trial the defendants in error[3] moved to dismiss the charges against them on the ground that it appeared on the face of the information that the proceeding for contempt was instituted more than one year after the date of the alleged acts complained of. The United States demurred to this motion on the ground that, treating it as a special plea in bar, the matters therein contained were not sufficient in law to bar the prosecution of the information. The court, likewise treating the motion to dismiss as a special plea in bar raising the question of the statute of limitations, overruled the demurrer and dismissed the information as to the defendants in error on the ground that the prosecution was barred by the statute of limitations.

1. The Criminal Appeals Act provides that a writ of error may be taken by the United States from the district courts direct to this Court "in all criminal cases, in the following instances, to-wit: . . From the decision or judgment sustaining a special plea in bar, when the defendant has not been put in jeopardy." The defendants in error challenge our jurisdiction under the present writ of error upon the grounds that this is not a criminal case, that the judgment was not one sustaining a special plea in bar, and that they had been put in jeopardy. We cannot sustain this contention.

While a proceeding instituted by the United States for the punishment of a criminal contempt committed by a violation of an injunction is not "a criminal prosecution" within the provisions of the Sixth Amendment relating to venue in a jury trial, *Myers* v. *United States*, 264 U. S. 95, 105, such a criminal contempt is "an offense against the United States" whose prosecution is subject to the statute of limitations applicable to such offenses, *Gompers* v. *United States*, 233 U. S. 604, 611, and which, as such an offense, may be pardoned by the President under Article II of the Constitution, *Ex parte Grossman*, 267 U. S. 87, 115. The only substantial difference between such a proceeding for criminal contempt and a criminal prosecution is that in the one the act com-

[3]The United States had previously agreed to dismiss the contempt proceeding against all the other defendants except one.

plained of is the violation of a decree and in the other the violation of a law. *Michaelson* v. *United States,* 266 U. S. 42, 67. In *Gompers* v. *United States, supra,* 610, this Court said, in language which was quoted with approval in *Ex parte Grossman, supra,* 116: "It is urged . . that contempts cannot be crimes, because, although punishable by imprisonment and therefore, if crimes, infamous, they are not within the protection of the Constitution and the amendments giving a right to trial by jury &c. to persons charged with such crimes. . . It does not follow that contempts of the class under consideration are not crimes, or rather, in the language of the statute, offenses, because trial by jury as it has been gradually worked out and fought out has been thought not to extend to them as a matter of constitutional right. These contempts are infractions of the law, visited with punishment as such. If such acts are not criminal, we are in error as to the most fundamental characteristic of crimes as that word has been understood in English speech. So truly are they crimes that it seems to be proved that in the early law they were punished only by the usual criminal procedure . . , and that at least in England it seems that they still may be and preferably are tried in that way." And we think it clear that informations brought by the United States for the punishment of criminal contempts constituting offenses against the United States are "criminal cases" within the meaning of the Criminal Appeals Act, in as real and substantial a sense as ordinary criminal prosecutions for the punishment of crimes. See *Bessette* v. *Conkey Company,* 194 U. S. 324, 335 *et seq.*

Whether the judgment sustaining the motion of the defendants in error and dismissing the information on the ground that the prosecution was barred by the statute of limitations, was a "judgment sustaining a special plea in bar" within the meaning of the Act, is to be determined not by form but by substance. *United States* v. *Thompson,* 251 U. S. 407, 412. The material question in such cases is the effect of the ruling sought to be reviewed. It is immaterial that the plea was erroneously designated as a plea in abatement instead of a plea in bar, *United States* v. *Barber,* 219 U. S. 72, 78, or that the ruling took the form of granting a motion to quash which was in substance a plea in bar, *United States* v. *Oppenheimer,* 242 U. S. 85, 86, *United States* v. *Thompson, supra,* 412. Here the motion to dismiss raised the bar of the statute of limitations upon the facts appearing on the face of the informa-

tion, and was equivalent to a special plea in bar setting up such facts. And the effect of sustaining the motion was the same as if such a special plea in bar had been interposed and sustained.

It is also clear that as the court had merely entered a preliminary order for the taking of testimony for use at the trial, and had not commenced its sitting for the trial, the defendants in error had not then been placed in jeopardy.

2. Finding, therefore, that we have jurisdiction under the writ of error, we proceed to consider the contention of the United States that the prosecution of the information was not barred by the limitation of one year prescribed in § 25 of the Clayton Act.

In *Gompers* v. *United States*, *supra*, 611, decided in May, 1914, it was settled that prosecutions for criminal contempts committed by violations of injunctions, were barred by the general three years' limitation applicable to non-capital crimes under R. S. § 1044.[4] And the sole question to be considered is whether this has been changed by § 25 of the Clayton Act, passed in October, 1914.

The provisions of the Clayton Act relating to the punishment of criminal contempt are in § § 21 to 25, inclusive. Sec. 21 provides "That any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States . . by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided." Sec. 22 relates to the procedure, trial, punishment, etc., in proceedings for the punishment of "such contempt;" Sec. 23 to the allowance of writs of error. Sec. 24 provides "That nothing herein contained shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section twenty-one . . may be pun-

[4]The amendment made to that section by the Act of 1921, 42 Stat. 220, c. 124, U. S. C., Tit. 18, § 582, is not here material.

ished in conformity to the usages at law and in equity now prevailing." And Sec. 25 provides "That no proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts. . ."

Although Sec. 25 is broad enough, upon its face, to provide a period of limitation of one year in all criminal contempts, we think that when construed in the light of the context and read in connection with the preceding sections, it does not relate to the prosecution for criminal contempts of the character here involved. The Act, as stated in *Michaelson* v. *United States, supra,* 66, is "of narrow scope," and "carefully limited to the cases of contempt specifically defined."

Sec. 21 relates only to the prosecution for the disobedience of orders, decrees, etc., by doing any forbidden act which is of such character as to constitute also a criminal offense under a Federal statute or State law. And Sec. 24 specifically declares that "nothing herein contained,"—meaning evidently no provision in the Act relating to prosecutions for criminal contempts—shall be construed to relate to contempts committed in disobedience of any order, decree, etc., entered in any suit brought in the name or on behalf of the United States; but that these and all other cases of contempt not specifically embraced within Sec. 21, may be punished in conformity to the prevailing usages at law and in equity.

It is plain, we think, that this specific exception in Sec. 24 applies to Sec. 25 relating to the period of limitations as well as to the other sections, and hence that the one year limitation prescribed by Sec. 25 has no application to the proceeding in the present case, which was brought for the disobedience of a decree entered in a suit brought and prosecuted in the name and on behalf of the United States.

We find nothing in the legislative history of the Act which indicates any different intention on the part of the Congress.

Judgment reversed.

Mr. Justice STONE did not sit in this case.